

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ALVIN FULTON, JR.,

Plaintiff,

v.

**9:02-CV-1248
(FJS/GHL)**

M. L. MUSSEN and DANIEL A. SENKOWSKI,

Defendants.

APPEARANCES

OF COUNSEL

ALVIN FULTON, JR.

02-B-0775

Great Meadow Correctional Facility

Box 51

Comstock, New York 12821

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendants

BRIDGET ERIN HOLOHAN, AAG

SCULLIN, Senior Judge

ORDER

By Order filed on January 26, 2006, this Court granted Defendants' motion to dismiss Plaintiff's complaint in its entirety. *See* Dkt. No. 92. On that same day, the Court entered judgment in favor of Defendants and against Plaintiff. *See* Dkt. No. 93. Plaintiff has appealed from that Order and Judgment. *See* Dkt. No. 94. Currently before the Court is Plaintiff's request to proceed *in forma pauperis* during that appeal. *See* Dkt. No. 95.

Rule 24 of the Federal Rules of Appellate Procedure governs the procedure for leave to

proceed on appeal *in forma pauperis* and provides, in pertinent part, that

[a] party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court – before or after the notice of appeal is filed – certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3).

Having reviewed the entire file in this matter, the Court finds that, for the reasons set forth in Magistrate Judge Lowe's October 25, 2005 Report-Recommendation, this Court's January 26, 2006 Order, and the other filings related to Defendants' motion to dismiss, this appeal is not taken in good faith in accordance with 28 U.S.C. § 1915(a)(3).

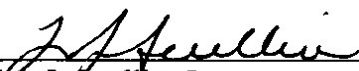
Accordingly, the Court hereby

CERTIFIES that an appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) and, therefore, Plaintiff's request to proceed with an appeal from in matter *in forma pauperis* is **DENIED**; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: August 29, 2006
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge